

# MINUTES OF THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

June 27, 1992

**BE IT REMEMBERED**, That the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi met in a special called meeting in Jackson, Mississippi, on Saturday, June 27, 1992, at 10:00 a.m., and pursuant to notice by telephone to each and every member of said Board. At the above named place there were present the following members to wit:

Mr. William Sterling Crawford, Mr. Frank Crosthwait, Ms. Ricki R. Garrett, Mr. Will A. Hickman, Mr. J. Marlin Ivey, Mr. James W. Luvene, Ms. Diane Martin Miller, Mr. J. P. Mills, Mr. Carl Nicholson, Jr., Dr. Cass Pennington, Mr. Sidney L. Rushing, and Ms. Nan McGahey Baker. The meeting was called to order by Mr. Crosthwait and opened with prayer by Mr. Luvene.

Also attending were institutional executive officers: Dr. Walter Washington, Alcorn State University; Dr. Kent Wyatt, Delta State University; Dr. James Lyons, Jackson State University; Dr. Willie L. McDaniel, Provost and Vice President for Academic Affairs for Dr. Don Zacharias, Mississippi State University; Dr. Clyda Rent, Mississippi University for Women; Dr. Roy Hudson, Vice President for Administration for Dr. William Sutton, Mississippi Valley State University; Dr. Gerald Turner, University of Mississippi; and Dr. Aubrey Lucas, University of Southern Mississippi.

Board Administrative Staff: Dr. W. Ray Cleere, Commissioner; Dr. Lucy Martin, Associate Commissioner for Finance and Planning; Dr. Charles Pickett, Associate Commissioner for Academic Affairs; Mr. Steve Kirchmayr, Special Assistant to the Commissioner; and Ms. Debbie Harris, Administrative Assistant.

Office of the Attorney General: Attorney General Mike Moore; Mr. Lloyd Arnold, Assistant Attorney General; Mr. Robert Jenkins, Special Assistant Attorney General; and Mr. Ed Davis Noble, Special Assistant Attorney General.

Private Counsel for Ayers Case: Mr. Bill Goodman and Mr. William Ray.

Governor's Office: Mr. Andy Taggart, Chief of Staff; Dr. Jeanne Forrester, Education Adviser; Ms. Johnna Plummer, Press Secretary; and Mr. John Arledge, Deputy Press Secretary.

Various representatives of the media.

## **Purpose of Meeting**

This was a special meeting of the Board called by unanimous consent of the Board with all Trustees present.

The purpose of the meeting was to discuss the Supreme Court ruling of June 26, 1992, in UNITED STATES, PETITIONER v. KIRK FORDICE, GOVERNOR OF MISSISSIPPI, et al. 90-1205 and JAKE AYERS, et al., PETITIONERS v. KIRK FORDICE, GOVERNOR OF MISSISSIPPI, et al. 90-6588 for its impact and implications on public higher education in Mississippi and the remanding of the case which resulted in continuing litigation.

The Supreme Court sent the lawsuit back to the 5th U. S. Circuit Court of Appeals in New Orleans. As further shown in the outline in **EXHIBIT 1**, the Supreme Court held:

- 1.The courts below did not apply the correct legal standards in ruling that Mississippi has brought itself into compliance with the Equal Protection Clause.
- 2.When the correct legal standard is applied, it becomes apparent from the District Court's undisturbed factual findings that there are several surviving aspects of Mississippi's prior dual system which are constitutionally suspect; . . . . Mississippi must justify these policies, as well as any others that are susceptible to challenge by petitioners on remand under the proper standard, or eliminate them.

# MINUTES OF THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

June 27, 1992

- (a) Although the State's current admissions policy requiring higher minimum composite scores on the American College Testing Program (ACT) for the five historically white institutions than for the three historically black universities derived from policies enacted in the 1970's to redress the problem of student unpreparedness, the policy is constitutionally suspect because it was originally enacted in 1963 by three of the white universities to discriminate against black students, who, at the time, had an average ACT score well below the required minimum.
- (b) The District Court's treatment of the widespread duplication of programs at the historically black and historically white Mississippi universities is problematic for several reasons. First, it can hardly be denied that such duplication represents a continuation of the "separate but equal" treatment required by the prior dual system, . . . . . Second, implicit in the court's finding of "unnecessary" duplication is the absence of any educational justification and the fact that some if not all duplication may be practically eliminated. Finally, by treating this issue in isolation, the court failed to consider the combined effects of unnecessary duplication with other policies in evaluating whether the State had met its constitutional duty.
- (c) Mississippi's 1981 mission assignments scheme has as its antecedents the policies enacted to perpetuate racial separation during the de jure period.
- (d) Also on remand, the court should inquire and determine whether the State's retention and operation of all eight higher educational institutions in an attempt to bring itself into constitutional compliance actually affects student choice and perpetuates the de jure system, whether maintenance of each of the universities is educationally justifiable, and whether one or more of them can practicably be closed or merged with other existing institutions.
- (e) In addition to the foregoing policies and practices, the full range of the State's higher educational activities, including its funding of the three historically black schools, must be examined on remand under the proper standard to determine whether the State is taking the necessary steps to dismantle its prior system.

A copy of the Supreme Court's "Syllabus" and minority opinions in the Ayers case are included in the Board's working file.

## Executive Session

On motion by Mr. Hickman, seconded by Mr. Nicholson, the Board voted unanimously to close the meeting to determine whether or not it should declare an Executive Session. On motion by Mr. Hickman, seconded by Ms. Baker, the Board voted unanimously to go into Executive Session for reasons later reported by the President in Open Session and stated in these minutes.

The President reopened the meeting and announced that the Board had voted unanimously to go into Executive Session to transact business as follows:

**To discuss on-going litigation, the impact and implications on higher education in Mississippi of the Supreme Court's opinion in UNITED STATES, PETITIONER v. KIRK FORDICE, GOVERNOR OF MISSISSIPPI, et al. 90-1205 and JAKE AYERS, et al., PETITIONERS v. KIRK FORDICE, GOVERNOR OF MISSISSIPPI, et al. 90-6588.**

The following reporters protested the holding of an executive session:

Mr. Frank Fisher, Associated Press  
Mr. John Mott Coffee, Columbus Dispatch  
Mr. Mark Leggett, Tupelo Daily Journal  
Mr. Jerry Houston, Commercial Appeal  
Mr. Geoff Pender, Hattiesburg American  
Ms. Reagan Walker and Ms. Sarah Campbell, The Clarion Ledger  
Mr. Steve Wise and Mr. Ross Camp, WLOX

**MINUTES OF THE BOARD OF TRUSTEES OF  
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**June 27, 1992**

In Executive Session, the following business was conducted and later reported by the President in Open Session:

**Discussed on-going litigation, the impact and implications on higher education in Mississippi of the Supreme Court's opinion in UNITED STATES, PETITIONER v. KIRK FORDICE, GOVERNOR OF MISSISSIPPI, et al. 90-1205 and JAKE AYERS, et al., PETITIONERS v. KIRK FORDICE, GOVERNOR OF MISSISSIPPI, et al. 90-6588.**

**The Board was advised of the current position of the litigation and began discussion on a broad basis for looking at a possible settlement of the matter without the need for continued litigation.**

**Presentations reviewing and analyzing the opinion of the Supreme Court were made by Attorney General Mike Moore and private counsel for the Ayers case, Mr. Bill Goodman and his associate, Mr. William Ray.**

On motion by Mr. Hickman, seconded by Mr. Rushing, and unanimously passed, the Board voted to return to Open Session and conduct a press conference.

In Open Session, the private counsel for the Ayers case, Mr. Bill Goodman and Mr. William Ray updated the Board and explained the Ayers decision as a matter of pending litigation.

After the discussion, on behalf of the Board, Mr. Crosthwait made the following statement to the press with regard to the June 26, 1992, ruling of the Supreme Court in the Ayers case:

**"At this time and place in the history of our state, this case has created an environment that gives us an opportunity and challenge to resolve the issues in question and continue our pursuit of quality and excellence in public higher education in Mississippi. Our actions will have an impact on public higher education throughout the country, and we have a responsibility to provide the leadership needed in concert with our state leadership in hopefully resolving this case."**

**Adjournment**

There being no further business to come before the Board, the meeting was adjourned at 12:25 p.m.

**President, Board of Trustees of State Institutions of Higher Learning**

**Associate Commissioner/Executive Secretary, Board of Trustees of  
State Institutions of Higher Learning**

**EXHIBITS**

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STATE INSTITUTIONS OF HIGHER LEARNING**

**June 27, 1992**

EXHIBIT 1 Outline of Supreme Court's opinion in **UNITED STATES, PETITIONER v. KIRK FORDICE, GOVERNOR OF MISSISSIPPI, et al. 90-1205 and JAKE AYERS, et al., PETITIONERS v. KIRK FORDICE, GOVERNOR OF MISSISSIPPI, et al. 90-6588**, as prepared by

Mr. William Ray, private counsel.